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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,110	02/27/2002	Wilfried Jud	ATM-2215	4881

7590 11/06/2002

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EXAMINER	
JACKSON, MONIQUE R	
ART UNIT	PAPER NUMBER
1773	4

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/083,110	JUD ET AL.	
	Examiner	Art Unit	
	Monique R Jackson	1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. *09/457,006* .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. The preliminary amendment filed 2/27/02 has been entered. Claims 1-10 have been canceled. New claims 11-29 have been added. Claims 11-29 are pending in the application.

2. It is noted that the preliminary amendment refers to a "new Abstract set out on a separate page" to be substituted for the original Abstract, however it is noted that no "new Abstract" was submitted with the amendment.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Breitler et al (USPN 5,589,275.) Breitler et al teach a composite material suitable for sterilization containing a metal layer on both sides of which is a plastic layer wherein the metal layer is a metal foil, preferably aluminum or aluminum alloy with an aluminum purity of most preferably 99.5% or higher, including AA8014, AA8079 or AA8101, having a thickness of 8-120μm; wherein the plastic layer(s) is a polyamide-based thermoplastic containing polyamide with a thickness of 20-50μm (Abstract; Col. 1, lines 19-20; Col. 3,lines 1-22 and lines 66-67.) Breitler et al teach that the plastic layers on both sides of the metal layer may include composites of two or more films or layers wherein the polyamide-based thermoplastic layers may additionally and independent of each other be provided with an outer lying sealable layer and/or barrier layer of thermoplastics, such as a polypropylene sealable layer, wherein the sealable layers are sealable films deposited

via adhesives, applied by lamination or lamination coating wherein the thickness of the sealable films may be 6-100μm thick and furthermore, one or more layers, e.g. 1 to 10μm thick, of a sealing layer coating may be deposited on the plastic composite (Col. 4, lines 1-38.) Breitler et al further teach that a single or double-sided sealable composite may be obtained by single or double-sided coextrusion of the plastic layers, wherein in that connection, it is useful for the plastic layers to contain or comprise a polyamide-based thermoplastic and at least one polyamide layer to feature a sealing layer on at least one side, i.e. each layer of polyamide thermoplastic may be covered with a sealable layer on one side or both sides, independent of the other layers (Col. 4, lines 36-45.) Breiter et al teach that to join the aluminum foil or to bond the plastic films or individual layers to each other, an adhesive coating and/or bonding primer are usually employed wherein a suitable adhesive is a maleic-anhydride modified polypropylene, and suitable bonding agents are epoxy or urethanes, wherein the bonding agent or primer may be for example applied in amounts of 0.1-10g/m2, usefully 0.8-6g/m2 or the adhesive layer has a thickness of 1-12μm or applied in an amount of 0.1-14 g/m2 (Col. 5, lines 3-47.) Breitler et al further teach that the composite material may also feature a sealing layer such as PET on one or both sides of the composite independent of the other layers, with a thickness of 6-100μm (Col. 4, lines 20-35.) Breitler et al teach a number of layer arrangements wherein the plastic films may be formed by warm coating or coextrusion and may be subjected to stretch-drawing, to produce a composite film useful in manufacturing packaging and parts of packaging such as packaging containers, base parts, blister packs, for storing or packaging foodstuffs or pharmaceutical products (Col. 5, line 48-Col. 6, line 23; Col. 6, line 65-Col. 7, line 33.) With regards to the

limitation "lacquer", the examiner takes the position that the synthetic coating layers taught by Breitler et al read on the term "lacquer" layer.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 11-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breitler et al in view of *Ullmann's Encyclopedia of Industrial Chemistry*, vol. A11. The teachings of Breitler et al are discussed above. Breitler et al teach a composite film containing a metal foil, particularly aluminum, with plastic films on both sides thereof wherein the plastic films may be multilayer films formed from various layer structures and specifically teach the general layer structure as instantly claimed with layer thickness within or comprising the instantly claimed ranges utilizing optional adhesive, bonding and/or primer layers to bond plastic layers to each other and/or to the metal foil as instantly claimed wherein the plastic films may be extruded, coextruded, or laminated via adhesive. Though Breitler et al disclose all of the layers, layer materials and layer thickness as instantly claimed, Breitler et al does not specifically limit the invention to the specific composite film combination as instantly claimed, however, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize any of the structures disclosed by Breitler et al selecting from the disclosed materials taught by Breitler et al based on the desired film properties for a particular end use, and further to utilize

routine experimentation to determine the optimum thickness of the individual layers given that layer thickness is a result-effective variable affecting the barrier, mechanical, adhesion and sealing properties of the resulting composite based on the desired end use of the packaging composite taught by Breitler et al. Further, it would have been obvious to one having ordinary skill in the art to determine the appropriate laminating method, such as extrusion laminating, lamination coating, coextrusion or laminating via adhesives as taught by Breitler et al, to produce the multilayer plastic films based on the individual layer materials to be laminated wherein laminating via adhesives, extrusion coating and coextrusion are conventional methods of producing composite plastic films as evidenced by Ullman's which specifically teach that coextrusion is unique in that it can produce very thin multilayer films and that polyamide films are mainly employed in composite structures produced by lamination, extrusion coating, or coextrusion with sealing or barrier resins (6.7 Polyamide, page 105.) Ullman's also teach that composite films are conventionally utilized in the packaging industry to produce various packaging structures such as bags, sacks, and blister or cushion packs, or thermoformed structures such as containers from thicker films, wherein the combination of plastic films with aluminum foil produces semirigid composites with exceptionally low permeability to gases, water vapor and odors (6.13 Composite Films, 7. Summary of Uses, pages 108-109.)

7. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Breitler et al. The teachings of Breitler et al are discussed above. Though Breitler et al teach that the composite film may be provided with a sealing or sealable layer on either or both sides such as PET or like materials, Breitler el al do not teach the use of PBT however PBT is a known functional equivalent to PET and it would have been obvious to one having ordinary skill in the

art at the time of the invention to substitute PBT for PET given that they are functional equivalents.

8. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Breitler et al in view of Abrams (USPN 6,090,471.) Though Breitler et al teach that the composite is useful for producing packaging materials, Breitler et al do not teach that the composite further comprises a print layer or a print layer with a lacquer overcoat on the polyester outer layer. However, it is well known in the art, as taught by Abrams, that a sterilizable packaging composite can comprise a print layer to provide desired product information for a particular packaging end use and that a protective overcoat or lacquer layer can be provided over the print layer to protect the print layer during sterilization. Therefore, one having ordinary skill in the art at the time of the invention would have been motivated to include a print layer on the composite taught by Breitler et al to provide desired product information or decorative properties, wherein the print layer is further provided with a protective overcoat layer to protect the print layer during sterilization as taught by Abrams.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 11-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 38-54 of copending Application No. 09/505713 in view of Breitler et al (USPN 5,589,275) or EP 0 845 350 (EP'350.) Though the conflicting claims are not identical, they are not patentably distinct because the second functional layer of '713 comprising a coextruded or extrusion laminated polyamide/polypropylene film reads on the second functional layer of the instant invention. Further, it would have been obvious to one having ordinary skill in the art to select from any of the first functional layer materials or any combination thereof in '713 to produce the first functional layer of the instant invention. Additionally, though '713 does not claim the type and purity of the aluminum foil, it would have been obvious to one having ordinary skill in the art to utilize any conventional aluminum foil utilized in the art wherein Breitler et al teaches the use of aluminum with a purity of preferably 99.5% and higher wherein the aluminum may be alloys of type AA 8014, AA8079, or AA8101, which foils exhibit an elongation at failure of less than 30%; and wherein EP'350 also teaches the use of aluminum alloy such as AlFeMn, ALFeSi or AlFeSiMn with a purity of 98.5% or higher as a suitable metal foil in a similar composite film.

This is a provisional obviousness-type double patenting rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone numbers for the

organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

mrj
November 4, 2002